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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON
APPENDIXES H - I

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Date August 8th, 2001

58 pp

IN THE INTEREST)
OF:)Appeal from The Circuit
LUELLA JONESON) Court of Cook County
No 94JA1107)
Minor-Respondent)
Appellee)
) Appellate No. 98-3336
PEOPLE OF THE)
STATE OF ILLINOIS)
Petitioner-Appellee)
V.)
)
EUGENE JONESON) Mary Mulhern,
Respondent-Appellant) Judge Residing.

Reply Brief

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"Appendix H"

POINTS AND AUTHORITIES

In re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence

In 38 ALR 3d 812 perjury or willfully false testimony for an expert witness is basis for new trial on ground of newly discovered evidence

In 38 Alr 3d 813 annotation 2 as a general rule, newly discovered evidence, in order to justify the granting of a new trial , must be such as might reasonably be expected to change the result.

Expert Federal Rules of Evidence Opinion Testimony; Rule 7:09 Factual Basis: Sources of Knowledge. It is grounds for reversal if an expert witness is permitted to express an opinion before he has the supporting facts if they are not supplied in the course of the trial

in re L.L.S., 218 Ill. App3d at 461 , 577 N. E.2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future This standard has been criticized as too mechanical:

These plans are a means to an end, not an end in and of itself.

In re S.J. 233 Ill. App. 3d at 121, 598 N.E. 2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings. This is exactly the experience the defendant had with the caseworkers at Catholic Charities the agency representing DCFS.

In Re S.J., 233 Ill. App. 3d at 119-20, 598 N. E. 2d at 476 The benchmark for measuring such progress is the situation that triggered the initial removal of the children, or In re M.C., 201 Ill. App. 2d 792,798, 559 N.E. 2d 236,239 (1st District 1981)the conditions in existence when custody was taken from the parents

The DCFS 89 Illinois Administrative Code Ch. 111, sec. 304.2 Minimum parenting standards means that a parent or other person responsible for the child's welfare sees the child is adequately fed, clothed appropriately for weather conditions, provided with adequate shelter, protected from severe mental, emotional or physical harm and provided with necessary medical care and education required by law.

Ballweg v. City of Springfield 499 N.E.2d 1373 Evidentiary error, namely the improper admission of

evidence is important ground for a new trial when the error was prejudice

Illinois Adoption Act, 750 Ilcs 50/1 Clear and convincing evidence is required to support a finding of parental unfitness Also Freeman v. Settle, 75 Ill. App. 3d 799,31 Ill. Dec. 788, 393 N. E. 2d 1385 (1979)

Old Second Natl. Bank of Aurora v. Gould, 75 Ill. App. 839, 31 Ill. Dec. 49, 393 N. E. 2D 1356 (1979) Testimony that is physically impossible or so inherently improbable as to be contrary to the common experience of mankind is to be given no consideration.

Illinois Family Law and Practice Child Custody 34-404 annotation 9 As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that."

Aguinaga v.. City of Chicago, 243 Ill. App. 3d 552 183 Ill. Dec. 648, 611 N. E. 2d 1296 (1993)Manifest weight means the clearly evident, plain, and indisputable weight of the evidence.

Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)
A verdict is contrary to the manifest weight of the

evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence.

City of Evanston v. Ridgeview House Inc. 64 Ill. 2d 40, 349 N. E. 2d 399 (1976)
The court must consider the weight and the quality of the evidence, which necessarily includes any favorable to the defendant, and pass on the credibility of the witnesses

Bau v. Sobut, 50 Ill. App. 3d 732,735, 8 Ill. Dec. 486 365 N. E. 2d 724 (1977)
The trial court does not simply decide whether plaintiff has made out a prima facie case but must make a final determination and enter judgement for defendant if plaintiff has not met this burden of persuasion of more probably true than not.

Ill. Rev Statues Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody, Proof of such fact need only be by a preponderance of the evidence

Hill v. Ben Franklin Sav. & Loan Assn., 177 Ill. App. 3d 51, 126 Ill. Dec. 462, 531 N. E. 2d 1089 (11988)
On review, the decision of the trial court will not be reversed unless it is contrary to the manifest weight of the evidence.

Kocal v. Holt (1992, 3d Dist) 229 Ill App 3d 1023, 172 Ill Dec 106, 595 NE2d 169
The correct standard to apply in a case seeking a modification of the child custody order is clear and convincing evidence.

the Illinois marriage and dissolution of marriage act re. Stat. 1983 ch. 40 section 604(a) guards the right to appeal by providing for a record of the interview. This record is mandatory and cannot be waived by the parties

In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y.S 2d 716.

ARGUMENT

UNFITNESS

The major argument for the state was that after nine years of active involvement in services geared towards improving his parenting skills the defendant was properly found unfit for failure to make reasonable progress in his parenting skills. This was similar to the final judgement statement by Judge Mulhern This argument has two defective parts. The first being that

1a. services were not offered for over 9 years (3 years of case reviews , thus not allowing feedback for improving his parenting skills had been lost due to cancellation)Ill. Rev Statues Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody, Proof of such fact need only be by a preponderance of the evidence and 1b. that the services stated to be offered through the transcripts of Hector Rivera, the caseworker at that time were not In 38 ALR 3d 812 perjury or willfully false testimony for an expert witness is basis for new trial on ground of newly discovered evidence Personal testimony of the defendant (Vol 2 of 6, R188 ln21-R189 ln6) and trial exhibits. Also new substantial evidence reviewed by the judge in the motion to vacate the unfitness judgement for Luella Joneson and obtained through the Cook County Commissioners Office clearly indicate these services said to be offered for a period of nine years by the caseworker Hector Rivera could not have been because they were never offered at that clinic (Vol 1 of 2, 1/8/99, C227-235) Nor were they offered at any where else for Mr. Joneson by C.C. through Hectors own testimony.(Vol 1 of 6, R228 ln18-R229 ln4). In 38 Alr 3d 813 annotation 2 as a general rule, newly discovered evidence, in order to justify the granting of a new trial , must be such as might reasonably be expected to change the result.

The defendant and his attorney argues that it

was impossible to make any progress for the return of Luella Joneson because Catholic Charities had no intention of returning Luella to her father. The reasons given were 1. The caseworkers a. Provided the wrong services b. no services c. would not provide the services needed for her return in effective time frame or d. Would not cooperate with returning requests for services in a timely matter. In re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence.

In actuality the state totally ignores the testimony of Mr. Joneson as did the case workers as to the fact that case reviews had been canceled for up to 3 years with Catholic Charities by Catholic Charities and thus no feedback for services provided.. This was confirmed by the case notes of Minna Greene, Mr. J's counselor.(Vol 5 of 9, Te239 canceled 4/30/92, TE243 canceled /13/93, vol 4 of 9 TE23 held a case review without notifying, Te34 no case reviews for two years, TE42 the 5th case review canceled, TE106 no notification of case reviews that were held in October 1990 and April of 1991)

Mr. Joneson also testified that he was not attending parenting classes at Erie Family Health Center but parental stress services.(Vol 1 of 6, R193 ln11-16) and that he had only attended one parenting skills class, although he had asked and wanted to be recommended for them they told him it was not necessary for him to

have parenting skills.(Vol 1 of 2, C110 ln211-24) Thus Mr Joneson had only attended one parenting class in ten years(Vol 3 of 9, TE176) The state could only provide one certificate of parenting classes taken from 1985 to 1995 as indicated in the trial exhibits(TE3 of 9, TE176). This should be proof in itself as proof of services not offered.

Tod Harrison , Mr. Joneson's current therapist also noted the non-cooperation of the Catholic Charities agency and testified the following. The caseworkers did not cooperate with him either by writing or phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. J's parenting ability for the return of Mr. J's children (Vol 5 of 6, R65 ln15-18).

If no progress in parenting skills was made the above reasons should certainly be the reason why. Mr. Joneson was thwarted by the efforts of the caseworkers. Ironically parenting classes were not offered until the parenting assessment team incorrectly concluded that after 9 years of classes nothing could be done to improve Mr. J's parenting abilities.(Vol 1 of 2, 9/25/98, C80) With that information available C.C. than offered Mr. Joneson hundred's of hours of classes of which he completed and attended (Vol 3 of 9, Te30, 44,47, 124 and Sr1 of 2, 1/8/99, C176) but their timing allowed the classes to be too late for the return home of the children because adoption screening had been passed on 4/16/96 before the classes were completed. Some were not even allowed to be entered as evidence for the unfitness trial for Luella Joneson as they were

completed after the petition for adoption had been passed which was on May 10th of 1998.(Vol 5 of 6, R147 ln7-9)

It also must be remembered that neither of the caseworkers had any type of training class on dealing with parenting skills or helping parents to develop their parenting skills(Vol 3 of 6, R70 ln10-14, R72 ln5-10)and(Sr 1 of2, 1/8/99 C109) Julie Yalowitz testified that there were certain things that she felt were instinctual from herself as appropriate parenting skills (Vol 3 of 6 , R71 ln5-22). This in effect reduced Mr. Joneson to following the personal directives of the caseworkers to try to satisfy the goals of the service plan. Many which were not even related to the case, but used so the workers would feel confident in their decision about the return home of the children. The 4th district has spawned a string of cases following its decision in re L.L.S., 218 Ill. App3d at 461 , 577 N. E.2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J. 233 Ill. App. 3d at 121, 598 N.E. 2d at 477 (" To place compliance with DDFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings. This is exactly the experience the

defendant had with the caseworkers at Catholic Charities the agency representing DCFS.

Another one of the states major arguments was that none of the defendant's witnesses had ever seen him with his children. Therefore they were not in the position to say wether Mr. Joneson was qualified with the parenting skills for the return home of his daughter. The state also argues that none of the witnesses that saw Mr. Joneson with his daughter Luella would recommend her return home.

Some important facts were left out by the appellees in their statement of facts about these witnesses which should lower the weight of their testimony.

Two important facts were left out of the testimonies of Minna Greene who had recommended that no one should support the return of the children to Mr. Joneson The first being that she had asked for more time for the evaluation of Mr. J. With his children but was denied it by Catholic Charities which could not provide the transportation needed for the visits. (Vol 3 of 6, R173 ln17–22, R195 ln2-R197 ln5))and 2 that she had never seen Mr. J with Luella Joneson but only the older sibling sister's of Luella with Mr. J(Vol 5 of 6, R226 ln10-24). Throughout her entire testimony not one word was said about Mr. J. and his ability to parent Luella Joneson through her observations and reports, the child this adoption petition is concerned about because she never had any contact with her.. .

The 2nd major witness from the parenting assessment team was Kathy Pesek. She presented

herself as the coordinator of the parenting assessment team. As she had no prior training for assessing parents for parenting skills (Vol. 4 of 6, R98 ln20-24, R99 ln1-7) her testimony should be considered less of a quality one and of lesser weight. Pesek presents numerous hypothesis statements and conclusions on the interpretation of her interviews with Mr. J and his children but has presented no notes, videos or tape recorded conversations to support these statements or actions were made by Mr. J. At trial court. It reads in the Expert Federal Rules of Evidence Opinion Testimony; Rule 7:09 Factual Basis: Sources of Knowledge. It is grounds for reversal if an expert witness is permitted to express an opinion before he has the supporting facts if they are not supplied in the course of the trial. Kathy Pesek also does not list any authorities as to her conclusions on parenting skills. When testifying in court as to why Mr. J. did not meet the minimum standards of parenting she could not give any authorities such as The DCFS 89 Illinois Administrative Code Ch. 111, sec. 304.2 definition but rather supported her theories through her personal observations which she self admitted she was untrained for. City of Evanston v. Ridgeview House Inc. 64 Ill. 2d 40, 349 N. E. 2d 399 (1976)The court must consider the weight and the quality of the evidence, which necessarily includes any favorable to the defendant, and pass on the credibility of the witnesses Bau v. Sobut, 50 Ill. App. 3d 732,735, 8 Ill. Dec. 486 365 N. E. 2d 724 (1977)

The argument this appellant is presenting is that

the manifest weight of the evidence of meeting the minimum parenting requirements is clearly in the defendant's favor and not clear and convincing for the state even though the state's major witnesses who had seen him with his children were recommending a finding of unfitness and termination of parental rights. Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence. The appellant as support for his argument argues that: 1. the attorneys for the state, were so bias against Mr. Joneson that instead of presenting the facts as they were, they made up evidence that supported their position for adoption. This totally created a prejudice in the fair representation of the defendant's case in order to argue a below minimum parenting standard for Mr. Joneson 's parenting ability(Vol 6 of 6, R15 ln10-17) without providing evidence that supported but contradicted actual records. 2 caseworkers were inaccurate in their testimonies as to Mr. Joneson's parenting skills and directly conflicted and or contradicted with the manifest weight of the evidence presented in the case aid and caseworker visitation report sheets. And 3. the Parenting assessment team who was to judge Mr. J's parenting skills A..provided reports that were not supported by evidence such as notes , videos and tape recordings which had all been made at the visits or interviews B. Used opinions without the support of reliable medical or legal authorities for

their report conclusions. Their team achieved the ability to know what kind of parenting standards somebody is using largely by their own observation(Vol 4 of 6, ln8-12) C. Was untrained in analyzing parents for parenting skills especially for men (Threshold's for Women)This also should be viewed as a form of sexual discrimination against the defendant and thus a violation of the constitution including equal protection provided by the 14th amendment D Information passed on to the parenting assessment team by catholic Charities such as the girls had already testified in court that they wanted to be adopted was untrue(TE 6 of 9, TE 35 at 3 &) and that the father was under a court order not to be with the mother was untrue and unsupported by evidence.. (Vol 1 of 2, 9/25/98, C81 Purpose of Assessment at 3) Because of this misrepresen
tation of the facts the whole tone and structure of the analysis was off from the beginning and created considerable bias against the defendant.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice Ballweg v. City of Springfield 499 N.E.2d 1373

The plaintiffs in choosing to make a complete statement of facts in their brief repeatedly omitted the harmful facts against their case Also, many of the statement of facts were also based on the state's and guardian ad litem's attorney's arguments and not on evidence presented in court. Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)A verdict is contrary to the manifest weight

of the evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence.

For example on page 5 of the appellee brief they state that Luella was abused due to a substantial risk of injury as in the Petition for Adjudication of Wardship(CLR Vol 1 of 2, C5.9/25/98) They forgot to emphasize that this was due to the suspected mental illness of the parents as given in the temporary custody hearing order(Vol 1 of 2, 9/25/98 , C10). Defendant believes this was omitted to draw attention away from his argument that reasonable progress had been made for the return of Luella Joneson. DCFS service plans for the period Luella was brought into care also reflect this position (TE5 of 9, TE 149 explain why this rating was chosen, Father's psychological evaluations question his ability to parent) This was because the most important reason of why she came in to care for risk of harm, that of suspected mental illness of the parents was dismissed. The mental illness factor was the major reason the appellate court reversed the decision of the dismissal of the adoption petition of the trial court for the older sibling sister's of Luella Joneson. New intensive therapy by Todd Harrison as agreed upon by Catholic Charities concluded that no indications of this personality disorder existed In fact at the pretrial stage of Luella Joneson, all attorney's involved agreed that mental illness was no longer a issue (Vol 2 of 6, R138 ln6-14) The appellees argue that since the mental illness was never an issue at the trial level, thus his mental illness argument is moot on appeal This use of improper argument leaves useless the

interpretation of the statue for reasonable progress. Certain courts have interpreted this statue to hold that "reasonable progress" involves an objective judgement. The benchmark for measuring such progress is the situation that triggered the initial removal of the children, In Re S.J., 233 Ill. App. 3d at 119-20, 598 N. E. 2d at 476 or the conditions in existence when custody was taken from the parents In re M.C., 201 Ill. App. 2d 792,798, 559 N.E. 2d 236,239 (1st District 1981) The fact it was no longer as issue at trial level itself should be considered that it indeed was reasonable progress in itself wether argued or not. This interpretation of reasonable progress in the 1st district was ignored by the trial court and the trial court based its emphasis on the rulings of the 4th district where reasonable progress was measured by the parents compliance with court orders and DCFS service plans.

Even when the disposition hearing was reportedly the appellees, the state quotes as the conclusion that the respondent was unable to care for, protect, train or discipline Luella, but fails to put in the rest of the sentence . This could mislead the court to conclude this was an issue of parenting skills and not an issue of mental illness. The rest and the beginning of the sentence read that the father was unable for some reason other than financial circumstances to care for, protect. Etc. Luella.(CLR Vol 2 of 6, C37) No other detailed explanation was given.

Again on page 6 of the appellee brief, they again use statements not supported by evidence but rather the plaintiff's argument which is bias towards the defendant.

This being that Luella came into the system because Ms. O'Neill gave birth at home (with respondent attending) in order to prevent the Department of Children and Family services (DCFS) from finding about Luella's existence. Testimony by caseworker Julie Yalowitz stated because they were afraid that if they had gone to the hospital Luella would have been taken initially from the hospital. (Vol 2 of 6, R246 ln15-18) This was also part of Judge Mulhern's judgement reading. As argued in appellant's argument DCFS knew there was another baby to be born. In fact Mr. Joneson had told and written a letter to Willa Henning in court (Vol 1 of 2, 1/8/99 C137-140) several days after the baby had been born and that is how DCFS originally knew to go to the Joneson household. Substantial records are available that Luella Joneson was brought to Weiss Memorial after delivery at home by ambulance so both mother and daughter could receive proper medical treatment through Willa Henning's testimony (Vol 1 of 6, R103,ln7-10), and DCFS records. (Vol 3 of 9, TE194-210) and the defendant's own records (Vol 1 of 2, 1/8/99 C132-136) This evidence found in the record of both the state and the guardian certainly contradicts the above testimony of the caseworker Julie Yalowitz, the accusations of the state, and the judgement reading of the trial court judge, Judge Mulhern..

Again this tactic of using hearsay statements of witnesses in their argument continues on page 7. Plaintiff alleges in their statements that the defendant had been under a court order with Emily and Marilyn's case (Luella's older sisters) not to reside with the mother.

This court order has never been found in the record of Luella Joneson or been presented as evidence and therefore should be considered as an invalid argument. DCFS has had many years to present certified copies of this court order but have never done so.(Vol 1 of 6, R101, ln21-24-R1021-7) Agency workers and attorneys have used this order in many of their testimonies but have never supported it with the evidence that it ever existed.. This statement which has caused serious bias against the appellant with respect to the court should be considered as hearsay unsupported by fact and moot as to argument.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice Ballweg v. City of Springfield 499 N.E.2d 1373

The appellees also bring up the issue of feeding adult cereal to Luella found in the investigation. Again the appellees do not give the complete story. The actual intake report only indicates cereal (Vol 1 of 9, Te 19, 21) It does not indicate adult cereal as the guardian plaintiff argued(Vol 5 of 6, R233 ln21-23) or that it was of a liquid consistency fed in a bottle as this defendant motioned in his order to vacate(Vol 1 of 2, 3/5/99, C174). Again the appellees in their statement of facts exagerrate the actual evidence and substitute the plaintiff's argument or their witness hearsay testimony.

This bias presentation of the statement of facts continues for parenting deficiencies listed on page 8, as the appellees tell how the defendant brought toys with small parts to a visit that Luella could have swallowed. They failed to point out that these toys were gifts for

Luella's older sisters and were not for Luella's use or play at the visit. Also that the older sister's did not live with Luella and the only time Luella would come into contact with these small parts was for that day and visit. Or that the environment was apparently safe enough that the caseworkers did not have to take the older girls gifts away to provide for the safety of Luella but she did suggest to put some of the smaller items away which the girls did do after opening their gifts..(Te 8 of 9, TE156b). Let it be noted that Julie Yalowitz, Luella's caseworker, testified that none of the toys Mr. Joneson brought to the visits for Luella had small parts (Vol 3 of 6, 146 ln23-24)

Some of the examples given for inappropriate gift giving , and inappropriate activities and toys to be brought to visits certainly seemed to plaintiff to beyond the normal These went from bringing a deck of hearts cards to visits or wanting them to bring kid magazines home that he brought Old Second Natl. Bank of Aurora v. Gould, 75 Ill. App. 839, 31 Ill. Dec. 49, 393 N. E. 2D 1356 (1979) Testimony that is physically impossible or so inherently improbable as to be contrary to the common experience of mankind is to be given no consideration. Caseworker testimony is also contradictory of their reports. They testified that Mr. J. always attempted to engage the children in appropriate activities.(Vol 3 of 6, R216 ln7-11)

The state continues on with the misrepresentation representation of the statement of facts with regards to parenting deficiencies by using one time that Mr. Joneson had difficulty at a parenting task

and making it an always situation The following examples are the proof that manifest weight of the evidence is in favor of the defendant. Caseworkers argue that Mr. Joneson was unable to even change diapers It was testified to that it was because he could not hold Luella still.(vol 3 of 6, R11, 26) Caseworkers took this one time he had difficulty and generalized it as always a parenting deficiency. They failed to mention the other overwhelming number of times that the defendant had no problems changing diapers. (VOL 2 of 9,TE156b,157B,159B,163B,168B,169B,170B,172, 176,178,188,190,194,196,210, ETC.)

The caseworkers did the same tactic when they reported the feeding of food to Luella. They have indicated excessive feeding and messiness with Luella at visits. These circumstances actually occured rarely In fact the case records indicated just the opposite of the caseworkers testimony (Vol 2 of 9, Te141b, 150b Father brought his usual- formula- clothes- diapers, 156b, 157b,158b, 160b father brought milk. Fed Luella and burped her.161b father fed Luella, 162b,163b,165b,166b Mr. Joneson fed Luella some strained sweet potatoes and prunes.. Mr. Joneson spillled a can of strained peas on the floor. Mr. Joneson cleaned up the mess with a colth that he brought.,167b Mr. Joneson fed Luella some spoonfuls of bananas, turkey, squash and peas. Mr. J. Also gave Luella some formula to drink, 168b Mt. J. Fed Luella some sweet potatoes and chicken. Luella did not really like the chicken, so Mr. J. Gave her a little sample of some peaches.169b bananas,beef and peaches and fed

Luella,170 Eugene fed luella some baby food,172 Luella ate a little but played with her food.176 Eugene placed his daughter on his lap and began to prepare some miolk to drink and some cereal to eat. Luella ate a little cereal and a littele bread, 178Eugene brought a cake to celebrate Luella's birthday, gave some cake to Luella but she did not like it very much Luella began nibbling on cheerios, Luella tried some cake again, luella spilled her cheerios all over the floor. Eugene cleaned up the mess. 182 The children played with Luella and ate snacks.188 Luella was given a baby cookie which she nibbled on for a little while. Eugene dipped the cookies in her juice to soften them up a little bit. Eugene gave Luella a small slice of chocolate which she was to mess up her hands and face. Eugen wiped Lulla clean and decided that the chocolate was not the best idea. 192 Eugene fed Luella 194 Mr. J fedd Luella he showed her how to drink from a straw. „ 196 Luella was not interested in eating.....222. As indicated by the evidence above in contradiction to caseworker testimony the case aid reports show numerous times of no mess and untidiness during visits. Aguinaga v., City of Chicago, 243 Ill. App. 3d 552 183 Ill. Dec. 648, 611 N. E. 2d 1296 (1993)Manifest weight means the clearly evident, plain, and indisputable weight of the evidence.

Again the plaintiffs fail to present all the evidence with regards to safety issues about Luella. The first being the incident where Mr. J. had left a knife in the middle of the table by Luella' older sister Emily to cut a brthday cake who than had to prevent Luella fom getting it. The reason this was so dangerous was because this

caseworker testified that this knife was sharp and metal. Later this was contradicted in cross examination and by another caseworker's testimony of the same knife.(Vol 6 of 6, R3 ln20-R4ln16) The evidence was that on least one other occasion, that there was a plastic knife(Vol 5 of 6, R203 ln24-R204 ln1-2) Also that the state eventually withdrew the statement entirely from its charges (Vol 5 of 6, R205 ln19-20)

The second major incident about safety was about a plastic bag that Mr. Joneson had started putting over his daughters head to eventually cut a whole out for a bib. This Mr. Joneson denied in court when testifying and confirmed that Julie had lied about the testimony also. (Vol 5 of 6, R202 ln16-24 -R203 ln1-16) The caseworkers and the state again try to present Mr. J. As a parent who failed to recognize unsafe situations. Again case aid records show a diifferent story about Mr. J, the defendant.(TE 2 of 9, Te157b the nat-father seemed to be bothered by that lump on Luella's head.Te158b Mr. J asked to speak to the supervisor. Ms. Baquai came and observed the bump and said she would call the foster mother. Mr. J. Said that she looked scared a lot, He also said that he hopes she was not getting abused at the day care center. Mr. J. appears to be concerned about Luella's well being, TE192 Eugene followed Luella aroung the room to make sure she was safe.) Both caseworker testimonies indicate that Luella's environment was safe.and that they felt that Eugene would not harm Luella.(Vol 4 of 6, R29 ln10-14)

The plaintiffs also argue that the defendant was

hostile and argumenative refusing to take advice. (Vol 3 of 6, 13-26) But when the visiting records are reviewed very few indicate a disagreement so bad that Mr. Joneson would not comply with directives. (TE 2 of 9, TE163b This worker asked father to check Luella iif she was hot because he left her jacket on. He took the jacket off.TE164b He left many wrappers to her gifts lying on the blanket and Lurella had started to put some of these in her mouth so he was asked to be careful and the wrappers were put up and out of the way TE165b This worker asked him to take off her snowsuit to make sure she would not get too warm Father agreed and did this.TE169b This worker explained that he should probably keep things away from her that can hurt her, but that she's too young to be disciplined. He then agreed and removed th plates so she could not get them., TE 184 Worker told dad to watch her because she was getting food on the furniture and her clothes.TE190 worker told him to be sure and clean her hands so he doesn't get her clothes all dirty Dad finished feeding Luella, TE 194 Worker told him to hold the chair and move it away from the table so she would not hit her head TE198 asked Eugene to begin cleaning up TE206 when worker suggested putting her bib on , Mr. J. Said "Oh yeah" TE210Luella spelt juice and worker had to tell mr. J to clean it up that there was juice on the floor) (TE9 of 9, TE 13b he than took out a new outfit for her & two headbands- one he asked if it was ok, but the worker said no due to it being an older child headband, the other was age appropriate.).Hill v. Ben Franklin Sav. & Loan Assn., 177 Ill. App. 3d 51, 126

Ill. Dec. 462, 531 N. E. 2d 1089 (11988) On review, the decision of the trial court will not be reversed unless it is contrary to the manifest weight of the evidence.

Julie Yaowitz testified that outburts or inappropriate behavior happened in more than half the visits but in examination of the record only several could be found (TE 2 of 9, TE200-203 or Te 8 of 9,146b Chris began to tell Mr. J that the girls could only take one book home. Mr. J began to question "the rules" that they could only take one thing home, he told the girl's this is why I am in court against these people, This is America and we are allowed to read what we want 152b When Marilyn & Emily asked him why Luella had been crying so much he told them that it was me who made them cry because I would not let them visit enough and I let her get too bonded with the foster parents.)

But in fact Julie Yalowitz, Luella's caseworker for most of the case never stopped any of the visits (Vol 3 of 6, R138 ln8-12) She did talk to the attorneys of the Luella but they did not believe that the damage or the instances were enough to terminate visits (Vol 3 of 6, R139 ln20-R140 ln8)

Again the caseworkers take incidents of Luella crying and try to make it a major reason why he was unable to meet her needs, No mention of collicky was ever made for Luella when she was a baby and all ideas that she missed the defendant and was letting out her frustration were denied as impossible even though she cried as a baby only when she came to visits in the beginning. (TE 2 of 9 141b,142b she cried again, he tries to talk to her, thinks she is crying because she

wants to go home143b,,144b,father brought formula, toys and clothes, played lullabyes ,Luella cried, he cried,145b,146b Lella cried,he tried talking to her to calm her down, 147b father brought new toys and formula, talked to her a lot she cried for 25 minutes, 148b father tries very hard to get luella to sop crying at visits, 149b father brought new stuffed animals ,Luella cried 25 minutes, 151b Luella cried , he holds her and talks to he but it doesn't help 152b No problems out of the ordinary, 154b Luella cried throughout visit nothing the father did stopped her 155b No crying reported 156b Father interacts with luella well 157b father bothered by bump on luella's head.159b Dad picked Luella up and put her on his lap Luella began crying Dad put Luella back on the floor, but she did not stop crying. Dad put her pink jumpsuit that he bought her on as she lay on the floor. Dad picked Luella up again and gave her more formula. Luella continued to cry and Dad gave her a pacifier. Caseaid took pictures of the two sitting on the couch. Luella stopped crying and started playing.) Very rarely did Luella cry at visits after this point in time. Mr. Joneson was never informed of crying by Luella before she left for visits from the adoptive home until it was reported iin a case review report.. Only one visitation report indicates this as a matter of trial records.(Vol 2 of 9, 199b Luella was crying and fidgeting when she was picked up so foster dad had to go to visits.) A pattern of distinct difference exists between case aid reports and caseworker reports exsists. This more than supports that the agency and the caseworkers were geared for adoption.

Note the only negative reports were monitored by the caseworker Julie Linkon Yalowitz or Christine Foley. Christine Foley testified that the majority of the visits that the respondent would have with his children he would not allow Luella to be with Marilyn, Luella would cry continuously and Emily would clean up and respondent would ignore caseworker suggestions.(R Vol 4 of 6, 6-7). Again this is contradicted by more than the majority of the case aid reports and sometimes even the caseworker reports. These reports indicate real family interaction.(TE 8 of 9, TE 122 b Father brought a baby walker seat for Luella and the girls and father put it together, Father allowed girls to hold the baby. Marilyn was very excited and had to be reminded to calm down TE 132 Father allowed Marilyn to feed Luella, Marilyn tried to tell father a story but he kept interrupting her and told her what to do with Luella. Emily also played w/ Luella She was very affectionate and appropriate, TE 136 report by the above Christine foley, Mr. Joneson was affectionate with the girls and made an effort to share his affection and attention, TE147 Emily, Luella & Mr. J.were playing on the slide, Marilyn was sitting across the room watching the other kids play. Mr. J. Came over twice to get her attention. She ignored him.TE150b Eugene asked Marilyn to read to Luella as previously agreed, Marilyn continued to play with her Barbie, Luella began crying so Eugene calmed her down, TE156b Luella said she had to go to the bathroom, Mr. J., worker, & Marilyn took her to the bathroom TE167 Emily said first let's get cleaned up, Mr. J. Told her to sit back and he'll do it, he wants her

to enjoy the visit) It should also be pointed out that the caseworkers Julie Yalowitz and Christine Foley did not attend the majority of all the visits but rather the caseaids monitered and made reports of the visits

Another major issue case workers brought up as inappropriate was the games, toys or activities brought for Luella to play with at visits. Again court transcripts indicate that not only did Mr. Joneson bring appropriate toys the majority of the time to visits .(Vol 5 of 6, R168ln8-25-R169ln2) but he actually belonged to a child development program that provided toys for a child according to its age group (Vol1 of 2, C162-165) Even ½ year case reports indicate age appropriate gifts for Luella.(Te9 of 9, Te 35,)

As Mr. Joneson's attorney summarized about the caseworkers. They did all kinds of things that were inappropriate and it was only for the reason so they could write negative things about it. They used all those things against him, but they did not cover their tracks good enough, Judge, because the visiting records are going to show that they sat there and they told inconsistaent stories. (Vol 6 of 6, R12) The caseworker also testifys that the defendant was unable to meet his daughters needs. (R vol 3 of 6, 50) Again the record is full of examples that he did and few that he did not. (Te 2 of 9, TE 156b Father interacts with Luella well. He appears to put thought into what to bring for her visits, TE159b Luella was lying on the floor on blankets that Dad had spread out for her to roam around on. Mr. Joneson's interaction with Luella was very positive . Mr. Joneson puts a strong effort to connect with her.

TE160b Father appears to care for Luella a great deal and prepared for the visits TE161b Father although angry with worker was able to enjoy his visit with Luella. He was organized for visit and prepared formula and toys TE166b Mr. Joneson was sitting on the floor with Luella resting on his lap. Luella seemed to be ina very happy and positive mental state. TE168bLuella sat on her father's lap while he talked to her about Thanksgiving and other interesting topics. Luella became interested and checked out all of the goodies placed before her. 168b Luella paged through a baby book as her father looked over her shoulder. Mr. Joneson produce a brush from his bag and began brushing Luella's hair, TE 170b Eugene layed on the floor and played with his daughter. TE172 Luella cooed and smiled a lot. She appears to be a happy child. TE176 Eugen placed Luella nest to him on the couch and they began drawing pictures with crayola markers. They built a house of the mini-cereal boxes. TE182 Mr. Joneson was appropriate with the girls and made an effort to share his affection and attention TE188 Eugene took Luella into his arms and gave her a big kiss, TE194 Mr. J. Took Luella in his arms and held her for a few mionutes. TE208 Luella began to cry so Eugene began to calm her down (TE9 of 9, Te6 After Eugene finished talking into the microphone , Luella began entering sounds into the microphone. TE9b he played games with her like tickling her & making funny noises to entertain her. TE19b Luella continued to cry and Dad gave her her pacifier Te21 the visit came to an end and the nat-father got her things together and told her he loved her and kissed her

"goodby") Dupree v. County of Cook, 287 Ill. App. 3d 135, 222 Ill. Dec. 504, 677 N.E. 2d 1303 (1997)A verdict is contrary to the manifest weight of the evidence when the opposite conclusion is clearly apparent. I.e., the findings appear to be unreasonable, arbitrary, and not based on the evidence. As Miss Wilson argued in her final argumen and asked the Judge to review these records closely because they are going to be totally contrary to what these workers have tried to lead you to believe.(Vol 6 of 6, R6 ln 13 -16) Ill. Rev Statues Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N)(2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody, Proof of such fact need only be by a preponderance of the evidence..

The appellees argue that the defendant's lack of parenting skills progress was exacerberated by the defendant being asked to leave his parental stress group because his attendannce had become sporadic and his actions inappropriate. When Lynna Wilson, who was another member of the parental support group Mr. Joneson attended testified, her testimony again contradicted the states. She indicated that she consistently saw Mr. Joneson attending, did not see Mr. Joneson hostile or belligerent during the Parental Stress Group, and that she did see Mr. Joneson take feedback from the instructors and that she did get positive feedback from Mr. Joneson.(Vol 5 of 6, 135 ln24-136 ln15)

The court had ordered a clinical update to

access strictly the ability to parent on September 26th, 1996. (Vol 2 of 6, R122 ln10-16) The clinical was never done (Vol 2 of 6, R137ln16-R138 ln1) This made the Catholic Charities agency soley rely upon the parenting assessment team as their source for investigation material. Illinois Family Law and Practice Child Custody 34-404 annotation 9 As to the weight to be given the results of the independent investigation, on the one hand they are advisory onlya nd may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decsion, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that." Otherfavorable reports or evaluations were ignored by the court. Terry Weck, the DCFS moniter contact of C.C. wrote father demonsrates appropriate parenting skills in the case review plan of 6/13/94.

When the defendant tried to enter a new witness, John R. Lietzau, a licensed clinical professional counselor and child and parent therapist though a pre-trial motion before the best interests hearing by having him observe visits it was denied (4/7/98). This witness had evaluated Mr. J. with children , had experience at evaluating parents for parenting and was a well known family interventionist for fathers. (Vol 1 of 2 1/8/99, C20-24) A previous evaluation by the parenting assessment team done through Threshholds of Mothers was extremely bias and negative in their evlauation of Mr. Joneson. The dramatic differnce in professional opnion could entirely relate to sexual orientation or bias.

A denied continuance for the best interest hearing prevented Mr. Lietzau from testifying along with other important witnesses for the best interest hearing due to scheduling. At the post-trial motion hearing to vacate (8/6/98) again John Lietzau was not allowed to testify on father's behalf (Vol 1 of 1, 11/17/98, R125 ln8) with regards to new substantial evidence on why there is no apparent justification, in this evaluators professional opinion, to discontinue his parental rights (Vol 2 of 2 1/8/99, C275-281,,especially C281) John Lietzau's testimony would have added more weight to the manifest weight in favor of the defendant and make even more evident and convincing that unfitness and adoption were not clear and convincing rulings for the manifest weight of the evidence. Cited in Robert v Mcdaniel 161 NE2d 48__ newly discovered evidence must be of such conclusive and controlling character that it will probably change the result if new trial is granted.

This was especially bias by Judge Mulhern since at the beginning of the unfitness trial when Mr. Joneson was having problems with his atttorney because she would not present all the evidence Mr. Joneson demanded.(Vol 6 of 6, R35 ln20-R36 ln4) Judge Mulhern reasssured Mr. Joneson " that is why a lawyer was appointed for you to assist you with that so the rules and every thing else was complied with..... when issues come up if they're relevant I will permit them(Vol 6 of 6 R36 ln16-ln24) During the hearing for the motion for a new trial and to vacate judgement, Judge Mulhern read over the forty exhibits which constituted new evidence and denied the new evidence.The contradicted

Judge Mulherns above stated promise of responsibility. In the motion to vacate or retrial Judge Mulhern stated " and so the additional evidence is not permited since adequate opportunity was given to Mr. Joneson to present this at trial and I still find that the evidence presented in both the fitness portion and the best interest portion was more than adequate to support the findings it made.. (Vol 1 of 1,11/18/98, R122 ln10-R 123 ln2) The missing evidence was enough to cause both Mr. J's attorney to motion for withdrawel and Mr. J. To motion for his attorney's dismissal..

Best Interests

There are a few points in the reply brief with respect to the best interests hearing not argued in the appellant's brief. With regards to the best interest of Luella Joneson, the state has also made an error in stating that Luella wishes to remain with the foster parents in their statement for support of termination of parental rights. They have presented no evaluations reports or testimonys of witnesses that indicate that the above statement is clear and convincingly true.

In fact no court recorded interview waas ever made of Luiella's wishes about custody. Appellant beleives this was in violation of state law and the due process and equal protection provided by the 14th amendment of the United States Constitution.. In RE custody of Krause, cite as Ill. App., 444 N.E. 2d at 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian In Child Custody

Illinois Family Law and Practice 34-407 annotation 9 guards the right to appeal by providing for a record of the interview. In 284 Ne.2d reporter, the court recognized that the interests of the father of an illegitimate child are no different from those of other parents. Condurrently section 604(a) of the Illinois marriage and dissolution of marriage act re. Stat. 1983 ch. 40 guards the right to appeal by providing for a record of the interview. This record is mandatory and cannot be wavied by the parties

When Christine Foley testified in the best interest hearing.the major compelling reason for termination of parental rights that was covered was Luella's desire to come to visits When asked if Luella had ever told her in child language that she does not want to come to visits she admitted she was never told that (Vol 1 of 1, R89 ln22-24)

Kathy Pesek of the parenting assessment team has managed to take several different answers to questions asked of Mr. Joneson and put them together to conconclud that only reason Mr. Joneson wanted the return of his daughters was so he could have a father image and feel better about himself. Again no evidence to support her testimony was produced such as case notes or recodings of her interview.

Christine Foley is also very contradicting. When examined in the unfitness hearing she testified there were occasions when she saw Luella caress and hug Mr. Joneson(Vol 4 of 6, R29ln10-17). (Julie Yalowitz, the caseworker befor christine, also testified to the same affect as to how she observed Luella caress

he father and hug him.(Vol 3 of 6, R 116 ln 6-12). Also that the girl's affectionately called their father "Daddy Gene" or " Gene"(Vol 5 of 5, R 6, ln 12-14)) In her testimony of the younger sister's unfitness trial Christine .Foley. exhibited her inability to recognize the emotions between father and daughters when she testified' I don't know what he was trying to do. I don't think I can answer that" when asked if the appellant tried to show love and affection to his daughter.(Vol 4 of 5, R 64 ln 19-22) But in the best interest hearing she testifies that Luella only gives hugs at the ends of the visits when prompted by the adoptive parents or her.(Vol 1 of 1, R 95 ln 11-16) This appellant seriously doubts how C. F. Could effectively determine the bond between father and daughter if she could not recognize the father's and daughter's ability to show their affection for each other. Kocal v. Holt (1992, 3d Dist) 229 Ill App 3d 1023, 172 Ill Dec 106, 595 NE 2d 169 The correct standard to apply in a case seeking a modification of the child custody order is clear and convincing evidence .Hill v. Ben Franklin Saving. & Loan Assn., 177 Ill. App. 3d 51, 126 Ill. Dec. 462, 531 N. E. 2d 1089 (11988) On review, the decision of the trial court will not be reversed unless it is contrary to the manifest weight of the evidence.

Also in her testimony Christine Foley clearly admits that the only criteria with regards to ethnic background was that the adoptive parents were Catholic.(Vol 1 of 1, 11/17/88, R 5 ln 7-12) Appellant believes that not only does that violate the rules set forth by the Catholic Charies agency (Vol 1 of 1, R 92 ln 11-

16) but also the religious freedom and family protection entitled to all families provided by the equal protection and due process clauses of the constitution. This especially since he had baptized his daughter as Methodist (Vol 5 of 6, R 169 ln 7-R 117 ln 4) and made it clear in court that he wanted Luella raised as a Methodist. In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y.S 2d 716. This was not done by the court for Luella Joneson as evidenced by Judge Mulhern's final judgement. The testimony is clear that she is bonded to them; that she has lived there most of her life..... and at this age, I believe that due to the bond that she has with her foster parents, that termination permitting her to be adopted by the Villa Nuevas is in her best interest (Vol 1 of 1, 11/17/98, R 51 ln 15-R 52 ln 6)

In conclusion this appellant pleads with the court to reverse the finding of unfitness and to dismiss the adoption petition. Also to order the return of visitation as soon as possible Even if unfitness is determined and adoption unavoidable father asks for an open adoption with visitation rights. This appellant, pro se sincerely believes there is a defect in the Illinois constitutional law that will not allow the return of his child on a joint custody basis when there has been no evidence proven of severe mental, emotional or physical

abuse of his children on the father's part but only a lacking of parenting skills that the social system does not feel comfortable about. .

IN THE INTEREST OF:	)
LUELLA JONESON	)Appeal from The Circuit) Court of Cook County
No 94JA1107	)
Minor-Respondent Appellee	))
	) Appellate No. 98-3336
PEOPLE OF THE STATE OF ILLINOIS	))
Petitioner-Appellee	)
V.	)
	)
EUGENE JONESON	) Mary Mulhern,
Respondent-Appellant	) Judge Residing.

Petition to Rehear

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"Appendix I"

PETITION TO REHEAR

Petitioner believes that there are several issues that the court has misapprehended or overlooked in rendering its decision to affirm the judgement of the circuit court for the finding of unfitness and termination of parental rights of the petitioner. Points Misapprehended or overlooked by the court on June 30th, 2000 include:

1.There is no evidence in the record to clearly support that L. J.'s caseworkers were biased.,

2.the court would not allow him to question the State's witness with regards to the parenting ability of the foster parents.

3. respondent argues that the circuit court failed to consider evidence showing that L. J. was of a different religion and nationality (race and ethnicity) than her foster parents but fails to cite any Illinois case law to support his claim that this is reversible error.

4. the court abused its discretion in refusing to grant a continuance so that his witnesses could be present but that a review of the transcript from the hearing shows that the respondent did not request a continuance

.5. Objective evaluations of respondent with L. J. reached the same conclusion that his caseworkers did that he was not able to engage L. J., could not focus on her safety, and had difficulty empathizing with her and anticipating her emotional and physical needs.

6. evaluations continued to note the same problems years after respondent began receiving services designed to improve his parenting skills.

7. Respondent was given many opportunities to show that he could make the kind of progress that would result in L. J.'s return home, but failed to do so. He took full advantage of DCFS referrals for services, but could not apply what he learned in classes.

_Points Misapprehended or overlooked

Point 1. There is no evidence in the record to clearly support that L. J.'s caseworkers were biased or thwarted Mr. Joneson's efforts for the return of his children.

The following is a list of evidence that have been misapprehended or overlooked by the court that would support that L.J's workers were biased or thwarted Mr. Joneson's efforts for the return o his children ;

1'. Visitation appointments lost were never rescheduled by Julie Yalowitz, Luella J's caseworker . Mr. Joneson's attorney Preston Jones had motioned the court to return the visits back to weekly on 5/16/95 (Vol 1 of 2, 9/25/98 Court Cert. C 39- 40) On June 21, 1995-Jude Swzed ordered and granted in part the return of visits every week (Vol 1 of 2, 9/25/98 C 42) On November 9th, 1995 actual visits were changed to twice a month. Coincidentallyvisitationanxietycontinuedthroughoutthe summer for Luella Joneson because Julie Yalowiz, her caseworker would not and did not comply with the court order of every two weeks. In fact the visits remained at

approximately once a month all summer long until Yalowitz returned them to at least twice a month. In her caseworker report plans it reads since August 1995, Luella has been very upset coming to visits, She begins to cry, kick and scream. Due to her reaction, her foster parents now accompany her in her car for visits (Vol 5 of 9, TE 102-103) Mr. Joneson wrote a letter to Julie Yalowitz's supervisor (Pam Palmentera) complaining that it had taken over 2 months for Julie to realize that the court order was for every 2 weeks and not for twice a month. (Vol 3 of 9, Te1 180) In court Julie denies she had any problem in determining the number of visits (Vol 3 of 6, R 140 ln 12-14) Julie's supervisor also responded with a letter giving Mr. Joneson two visits per month in spite of the court order of every two weeks (Vol 3 of 9, Te 121) The appellant Mr. Joneson also wrote a letter to Catholic Charities about June of 96 indicating that CC was not following the court order made by Judge Swzed and that unto that date they had missed at least 14 visits due to manipulating the visits to twice a month instead of every two weeks as ordered by court order (Vol 3 of 9, TE 25-26) This was also brought up in the appeal letter written on May 23, 1996 to DCFS (Vol 3 of 9, TE 67. Mr. Joneson asked for mediation with C.C. because Catholic Charities had constantly ignored the court order of visitation for Luella for every 2 weeks for the last 9 months (Vol 3 of 9, TE 64) (Also note the incomplete documenting of appellant's letter for the file of CC by Catholic Charities)

Point 2. Telephone calls were never returned to therapist

for feedback and services. Tod Harrison, Mr. Joneson's therapist, also noted the non-cooperation of the Catholic Charities agency and testified the following in trial court. The caseworkers did not cooperate with him by either writing or phone calls when written or telephoned for recommendations or suggestions on what could be done to improve Mr. J's parenting ability for the return of Mr. J's children (Vol 5 of 6, R 65 ln 15-18) This also resulted in the loss of counseling with Luella that was recommended by the Michael Reese Evaluation by Amy Anson .

3. False and inaccurate information was given to the parenting assessment team which affected their final report This included 1.that a court order existed that the father was not be living with the mother of his children and 2.that the two older sibling sisters had testified in court that they wanted to be adopted.(TE 6 of 9, TE 35 at 3

4.Caseworker reports by Julie Yalowitz and Christine Foley were inaccurate and only included information that would not benefit Mr. Joneson Letters written to his daughters were edited for content.

5. Caseworker services and help provided to father were non- existent unless father was to determine the services needed and than request them. Also services were not provided in a timely manner. This is explained in detail in point 6 below.

6. Previous case reviews had been canceled for over three years not allowing the father feedback for

improvement of his parenting skills as confirmed by the case notes of Mr. J's family counselor Minna Greene (Vol 5 of 9, Te 239 canceled 4/30/99 DCFS worker never appeared, TE 243 4/13/93 case review canceled) (Vol 4 of 9 TE 23 5/7/91 DCFS held a case review without notifying, TE 34 no case review for 2 years, TE 42 the 5th case review canceled, TE 106 no notification of case reviews that were held in October 1990 and April of 1991)

7. Caseworkers provided the wrong services. Confusion over volunteer parental stress group attendance and parenting classes by the caseworker Hector Rivera indicated that Mr. Joneson had been attending parenting skills classes for 9 years and still was unable to improve his parenting skills on setting limits and disciplining his children at visits. In reality Mr. Joneson had attended only one parenting class in ten years due to this error by the Catholic Charities agency. This new substantial evidence reviewed by the trial court judge in a motion to vacate the unfitness judgement of Luella Joneson and obtained though the Cook County Commissioner's Office clearly indicates that parenting class services said to be offered for a period of nine years by the caseworker Hector Rivera could not have been (Vol 1 of 6, R 228 ln 18 - R 229 ln 4) Thus Mr. Joneson had attended only one parenting class in ten years. (Vol 3 of 9, TE 176)

8. Caseworker testimony and information they passed on to evaluators was bias and oriented for adoption. Evidence given is ;

a. that Luella came into the system because Ms. O'Neill

gave birth at home (with respondent attending) in order to prevent the Department of Children and Family services (DCFS) from finding about Luella's existence. Testimony by caseworker Julie Yalowitz stated they(father and mother) were afraid that if they had gone to the hospital Luella would have been taken initially from the hospital. (Vol 2 of 6, R 246 ln 15-18) This was also part of Judge Mulhern's judgement reading. As argued in appellant's argument DCFS knew there was another baby to be born. In fact Mr. Joneson had told and written a letter to Willa Henning in court (Vol 1 of 2, 1/8/99 C 137-140) several days after the baby had been born and that is how DCFS originally knew to go to the Joneson household. Substantial records are available that Luella Joneson was brought to Weiss Memorial after delivery at home by ambulance so both mother and daughter could receive proper medical treatment through Willa Henning's testimony (Vol 1 of 6, R 103, ln 7-10), and DCFS records. (Vol 3 of 9, TE 194-210) and the defendant's own records (Vol 1 of 2, 1/8/999 C 132-136) This evidence found in the record of both the state and the guardian certainly contradicts the above testimony of the caseworker Julie Yalowitz, the accusations of the state, and the judgement reading of the trial court judge, Judge Mulhern.

b. The caseworkers allege in their statements that the defendant had been under a court order with Emily and Marilyn's case (Luella's older sisters) not to reside with the mother. This court order has never been found in the record of Luella Joneson or been presented as evidence

and therefore should be considered as an invalid argument. DCFS has had many years to present certified copies of this court order as indicated by Judge Szwed but have never done so.(Vol 1 of 6, R 101, ln 21-24-R 102 ln 1-7) Agency workers and attorneys have used this order in many of their testimonies but have never supported it with the evidence that it ever existed.. This statement which has caused serious bias against the appellant with respect to the court should be considered as hearsay unsupported by fact and moot as to argument.. Evidentiary error, namely the improper admission of evidence is important ground for a new trial when the error was prejudice Ballweg v. City of Springfield 499 N.E. 2d 1373

c. The caseworkers and attorneys also bring up the issue of feeding adult cereal to Luella found in the investigation . Again the appellees do not give the complete story. The actual intake report only indicates cereal (Vol 1 of 9, Te 19, 21) It does not indicate adult cereal as the guardian plaintiff argued(Vol 5 of 6, R 233 ln 21-23) or that it was of a liquid consistency fed in a bottle as this defendant motioned in his order to vacate(Vol 1 of 2, 3/5/99, C 174). Again the appellees in their statement of facts exaggerate the actual evidence and substitute the plaintiff's argument or their bias witness hearsay testimony.

Point 2.

The court would not allow him to question the State's witness with regards to the parenting ability of the foster parents. The court transcripts expressively indicate this

is true.

A better presentation of this idea is how the court basically relied upon the testimony of the caseworkers in a basic way which resulted in bias. When it came to questioning about specific situations that occurred at visits which brought up actual evidence about the foster parent's parenting skills the trial court Judge Mulhern said she did not want to get into it or it was irrelevant (Vol 1 of 1, November 17th, 1998, R 16 ln 7-8, R 17, ln 1-7}
. Many of these questions were directly related to the parenting skills of the foster parents.

Judge Mulhern would only accept general questions presented to caseworker Foley the way she wanted it.(Vol 1 of 1, November 17th, 1998, ln 10-12} This occurred directly after the specific questioning of Christine Foley on the parents involvement with Luella on which Christine Foley had no answers for.

Court transcripts show that if it came to answering any specific questions about Luella Joneson Christine Foley was at a loss of words and unqualified as she had been appointed as caseworker for Luella Joneson only six months earlier or a total of six visits..(Vol 1 of 1, November 17th, 1998, R 70 ln 14-16} even though she had participated in visits with her older sibling sisters and was aware of the case.

When asked if there had been any allegations of abuse or neglect in the foster home she answered no.(Vol 1 of 1, November 17th, 1998, R 71 17-23} This contradicts a caseworker report made by Laura Scott, Luella's caseworker for the first 11 months of her

care in CFS custody {Te 2 of 9, TE 157B, 158b} The father seemed to be bothered by the lump on Luella's head and asked to speak to the supervisor. Ms. Baquai came and observed the bump and said she would call the foster mother. Mr. J. said that she looked scared a lot. She also could not answer questions about 1. how long Mr. and Mrs. Villa Nueva worked, 2. how many hours Luella was in daycare, or 3. about the Villanuevas attendance in church with Luella.(Vol 1 of 1, November 17th, 1998 R 12, ln 4-24-R13 ln 1)

In this best interests hearing Judge Mulhern also showed bias or an abuse of discretion by failing to consider Luella's wishes with regards to adoption. In 3 Ill fam Law & Practice The court will determine custody in accordance with the best interest of the child by considering the wishes of the child's parent in addition, the court will examine the wishes of the child as to his custodian 750 ILCS 5/602(a) (2) A child' preference is an important factor in deciding custody.

Point 3. respondent argues that the circuit court failed to consider evidence showing that L. J. was of a different religion and nationality (race and authenticate) than her foster parents but fails to cite any Illinois case law to support his claim that this is reversible error.

Illinois has inadvertently addressed this issue with the Ill. Rev. Statues for Domestic Relations 40 @ 1501 It shall be an affirmative defense to any allegation under subsection (N) (2) that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal

custody, Proof of such fact need only be by a preponderance of the evidence. Placing Luella in a foster home that did not have the same religion or ethnic and cultural background surely should be considered an impediment for her bonding and return home to her birth parent.. This is true because not only was it important in meeting the Department of Children and Family Services of the State of Illinois guidelines for foster care placement , which were not followed in this case, but inhibited the religious and cultural bonding with respect to religion and race for Luella J, and her birth parent. Values that are so important to families that they are protected with constitutional law under the 14th amendment In Smith v. Organization of Foster families, Supra, at 862-863, 97 S. Ct. at 2119 (Stewart J. Concurring in Judgement) The interests of parents in their relationship with their children's are sufficiently fundamental to come within the finite class of liberty interests protected by the fourteenth amendment. Also in Santosky v. Kramer 102 S. Ct. 1388 m 91982) 1397 {8} a "the extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be condemned to suffer grievous loss" Also in Mathews v. Eldridge 424 U. S at 343, 96 S. Ct. at 907 Courts must examine all procedural protections offered by the State, and must assess the cumulative effect of such safeguards. As we have stated before, courts must consider " the families and the reliability of the existing procedures" before holding that the constitution requires more. At Mathews v. Eldridge, 424 U.S. 319.335, 96 S. Ct 8933,903, 47

L.E. 22d 18 The nature of the process due parental rights termination proceedings turns on balancing three factors: the private interests affected by the proceedings, the risk of error created by the state's chosen procedure, and the countervailing governmental interest supporting use of the challenge of the procedure. The issue of not adhering to religious and ethnic guidelines set by DCFS in effect was an act of constitutional error and thus considered to be grounds for reversal. This issue was presented in trial court to Judge Mulhern. (Vol 1 of 1, R 42, ln 6 - R 43 ln 6)

Additional state law could be found in re Santos 278 A.D. 373,105 N.Y. S. 2d 716 ,a court vacated an order committing for adoption to a Jewish social agency two sisters, aged seven and eight, both of whom as infants had been baptized as Roman Catholic. The court held that the children had a natural and legal right to their religious faith, which temporary exposure to another religion could not erase and in 331 Mass. 647,121 N.E. 2d 843 (1954) (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.. Family Law Quarterly, Volume xxv, Number 2, Summer 1991. Both Roman Catholic and Jewish faiths are considered Christian but there are first amendment inhibitions over issues between one religion and the other. 66 ALR 2d 1410 Religion as a factor in awarding child custody also in 34 POF 2d 423 Child Custody 34-407 annotation 7

Also in her testimony Christine Foley clearly admits that the only criteria with regards to ethnic background was that the adoptive parents were Catholic.(Vol 1 of 1,

11/17/88, R 5 ln 7-12) Appellant believes that not only does that violate the rules set forth by the Catholic Charities agency (Vol 1 of 1, R 92 ln 11-16) but also the religious freedom and family protection entitled to all families provided by the equal protection and due process clauses of the constitution. This especially since he had baptized his daughter as Methodist (Vol 5 of 6, R 169 ln 7-R 117 ln 4) and made it clear in court that he wanted Luella raised as a Methodist.

Point 4. The appellant states that the court abused its discretion in refusing to grant a continuance so that his witnesses could be present but that a review of the transcript from the hearing shows that the respondent did not request a continuance.

During Attorney Wilson's request to withdraw from representing Mr. Joneson on the Best Interest Hearing she also requested that Mr. Joneson be given 21 days to get new counsel in this case. (Vol 1 of 1, November 17th, 1998, R 59 ln 1-4)

Judge Mulhern was also fully aware that Mr. Joneson wanted to call additional witnesses and that Mr. Joneson wanted a continuance to do so. She also made it clear that they would have to be called and subpoenaed in order to appear (Vol 1 of 1, November 17th, 1998 R 65 ln 19-21). Mr. Joneson having only been appointed that day as to represent himself was not in the position legally by law to subpoena witnesses until the very moment she appointed him pro se (Vol 1 of 1, R 59,ln 9- 11). A continuance was also asked for several times in a round about way by Mr. Joneson's motions presented in court that day. This included the

motions; 1. to dismiss the best interest hearing that day. { Mr. Joneson used as one of the reason for dismissal was because his witnesses could not be there for the day (Vol 1 of 1. 11/18/98, R 44, ln 16-23). and 2 to duplicate the AcR Files of Catholic Charities.(Vol 1 of 1. 11/18/98 R 68 Ln 6-R69 ln 9} Judge Mulhern continued on to the best interest hearing anyway. (Vol 1 of 1. 11/18/98 R 69, 10-13}

Point 5. Objective evaluations of respondent with L. J. reached the same conclusion that his caseworkers did that he was not able to engage L. J., could not focus on her safety, and had difficulty empathizing with her and anticipating her emotional and physical needs.

Again the court has overlooked the manifest weight of the evidence which is truly supported by the case reports of the caseworkers and case aids and have concentrated more on the testimonies of the caseworkers and evaluators..

The court relies heavily on caseworker and investigator testimony on a few possible incidents as the manifest weight of the evidence for their affirmation instead of the manifest weight of the evidence in the record that clearly does not support the testimonies of the caseworkers or the evaluations of the evaluators.. In 34 POF 2d 424 Child custody 34-407 annotation 10 As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court.. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be

delegating its power to decided questions of child custody; and the court may not do that.

The court lists a few examples of this behavior by citing caseworker Julie Yalowitz's caseworker testimony that indicated that the appellant Eugene J. was continually compromising Luella J's safety Two major incident's were given. The first being a sharp knife that was left in Luella's reach and the second being the appellant almost used a plastic bag for a bib for Luella J. 3. The intake report indicated that Mr. J. was feeding adult cereal to Luella and 4. At one time when caring for a two year old Mr. J. admitted he had struck the child.

The court has overlooked that these accusations in her testimony should be unclear and convincing as 1. the actual question of the sharp dangerous knife being within Luella's reach was withdrawn by the appellees as contradicting other caseworker testimony (Vol 5 of 6, R205)(Vol 6 of 6,,R3 ln20-R4 ln16)(Vol 5 of 6. R203 ln 24-R204 ln 1-2)

.2. the plastic bag over the head accusation was denied by Mr. Joneson and confirmed that Julie had lied about that.(Vol 5 of 6, R202 ln 16-24-R203 ln 1-16).

3. The feeding of cereal to Luella as one of the reasons the case came into care Let it be clear that the actual intake report says cereal (Vol 1 of 9, TE 19,21). It does not mention adult cereal as the guardian plaintiff argued (Vol 5 of 6, R 233 ln21-23) or that it was baby cereal of a liquid consistency so liquid it could be fed in a baby bottle with a nipple as this defendant argued in his motion to vacate (Vol 1 of 2, 3/5/99, C174).

4.Kathy Pesek of the parenting assessment team had

written that Mr. Joneson had admitted to her at one time he was caring for a young child, a 2-3 year old and that he had struck the child. This statement was solidly denied by Mr. Joneson as evidenced in the Catholic Charities appeal letter written on 5/18/96 (SR 1 of 2 App stamp 3/5/99, C 155) (Vol 9 of 9, TE 99)

Point 6. Evaluations continued to note the same problems years after respondent began receiving services designed to improve his parenting skills.

Evidence in the records show that no evaluations were given after the petitioner began taking parenting classes for the return home of Luella Joneson.

The first parenting class and only offered to Mr. Joneson before Luella Joneson was brought into care was in 1991(Vol 3 of 9 TE 176) In fact the caseworkers had mistaken parenting classes for volunteer parental stress services because they had failed to review further into the content of the service offered as by Hector Rivera's testimony (Vol 1 of 2, 1/8/99 C 190).

. New substantial evidence confirms these services were never offered as Mr. Joneson had testified.
(Vol 1 of 6, R 228 ln 18 - R 229 ln 4)

No other parenting classes were offered until after the current and only parenting assessment was made (Vol 5 of 6 R145 ln 23-R146 ln 6)

. At which this time an unlimited number of parenting classes were allowed and taken even though the

parenting assessment said that no intervention would be sufficient (Vol 5 of 9, R 196).

There were no evaluations of Mr. Joneson's parenting skills after the original parenting assessment because of the above conclusion. When Kathy Pesek of the Parenting Assessment team was questioned in court as to if there was ever an occasion where she evaluated someone and she was assigned to evaluate them a second time: and their parenting skills progressed or got better she answered " Yes, but those are the families where we make recommendations for further services. They engage in those services; and we do a follow-up evaluation; and we can judge their progress (Vol 4 of 6, R 127 ln 9-16).

In other words no follow up evaluation was ever given to Mr. Joneson after he had completed the parenting classes recommended by Catholic Charities hired by DCFS. Therefore there are no evaluations which continue to note the same problems years after respondent began receiving services designed to improve his parenting skills. Thus the original and only evaluation by the parenting assessment team was used as the measure for progress of Mr. Joneson's parenting skills. The information in the assessment report was based on services offered to Mr. J. during the period Mr. J's two older daughters were in care of Catholic Charities when only one parenting class was offered and not during the period Luella was in care and services offered. In Interest of Austin Cite as 378 .E.2d 543 [5] Because it is impossible to measure progress without referring to a prior status, current status and the process

by which movement from the one status to the other occurred, absence of evidence regarding the prior status would render a determination of " reasonable progress" meaningless.

In Interest of A.T. Cite at 555 N.E.2d 403 (ILL App. 4 Dist 1990) Determination of unfitness of parent must be based upon parenting efforts or progress made during the entire period between the adjudication and the filing of termination petition, and the length of the period is not limited to the 12 months immediately following the determination; 12 month period is a limiting provision which guarantee the parent a minimum of 12 months in which to improve the situation between the adjudication and a hearing on the issue of termination.

The adjudication order was entered on March 28,1995 (Vol 1 of 2, 1/8/99, C 26) ad the disposition order entered on 6/21/95 (Vol 1 of 2, 1/8/9, C38) and the hearing on the issue of termination was on 4/7/98(Vol 1 of 1, R 56- 58 ln 2-4). The supplemental petition for appointment of a guardian with right to consent to adoption was filed on May 10, 1996 (Vol 1 of 2, 1/8/99, C65). The only parenting assessment Evaluation report was completed on 2/12/96 (vol 5 of 9, R 190) No further evaluations were done no further services were offered unless asked for by defendant. Some of the parenting classes Mr. Joneson took were not allowed to be entered even though they were completed before the termination hearing (Vol 5 of 6, 147 ln 7-9)

. Evidentiary error, namely the improper admission or exclusion of evidence, is an important ground for a new

trial when the error was prejudicial Ballweg v. City of Springfield 499 N.E. 2d 1373

Point 7. Respondent was given many opportunities to show that he could make the kind of progress that would result in L. J.'s return home, but failed to do so. He took full advantage of DCFS referrals for services, but could not apply what he learned in classes.

Respondent argues the reason he was unable to make progress was because the workers and evaluators were untrained in helping parents in learning parenting skills During court testimony, when the appellant's caseworker Julie Yalowitz was asked if she had any specific training for dealing with parenting issues with parents or parenting skills of parents and those interactions with children, she answered that she did not receive any specific training geared for that. (Vol 3 of 6, R 70 ln10-14, R 71 ln 3-11, R 72 ln5-10) She testified that how she knew what appropriate parenting skills were at a visit was because of certain things that were instinctual from herself which she were felt were appropriate for parenting skills (Vol 3 of 6, R 72) Christine Foley also testified that she had no training in parenting skills in the best interest for Emily and Marilyn, Luella's older sibling sisters (Sr 1 of 2 1/8/99 C 109) Also the parenting assessment primary expert witness also had no prior training for evaluating the parenting capabilities of parents (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7) Mr. Joneson's therapist, Tod Harrison unknowingly remarked about this evaluator's experience when she summarized that we do not see any

intervention as being sufficient to address the deficiencies in Mr. Joneson's parenting abilities (Vol 7 of 9, TE105) In Tod's testimony he state's that it is one of the central value of the field of mental health that nobody is beyond help (Vol 5 of 6, R 109 ln 7-10) The caseworker Julie Yalowitz was also unaware what was being offered in these classes (Vol 3 of 6, R136 ln 14-18) and so therefore were unable to tell if what the father of Luella J. was doing was what he had learned. The insufficiency of Yaowitz's training was apparent when she gave as examples of improper parenting skills such as bring a deck of cards when she was only 1 ½ years old(Vol 3 of 6 R 25 ln 12 -R 26 ln 1-2) or flash cards when she was not old enough to read (Vol 3 of 6, R 45 ln 10-15)

Contrary to caseworker testimony the record is full of evidence that Mr. J. could provide for the safety of Luella Joneson, was bonded to her and could empathize with her at visits and that he upon numerous occasions was able to change diapers or calm Luella down when she was upset,. These examples are listed in detailed in the amended brief for Luella Joneson.

In conclusion, this appellant summarizes that if there was no mental impairment for the father Eugene Joneson for learning his parenting skills. Than the most obvious choice left is that the services were not being offered that would provide for the progress needed for Luella J's return Home. In 750 Ilcs 50/1 486 Families Note 127 to find parent unfit under the adoption act section on ground there is inability to discharge parental responsibilities supported by evidence of mental

impairment, mental illness, or mental retardation and justification to believe that such inability to discharge parental responsibilities shall extend beyond reasonable time period, first it must be shown by competent evidence that parent suffers from mental inability sufficient to prevent him from discharging parent's normal responsibilities.

As all courts have admitted this delay in progress for the return home of Luella Joneson was not do to a mental impairment of the father. This appellant argues that it was do tor the failure of the CC agency to provide thorough case reviews without canceling, failure by CC to provide a report at the dispositional hearing of precisely what steps the parents must take in order to achieve the return of the child to their custody, failure to provide counseling for Luella with her birth father as recommended by the Michael Reese Evaluation, failure to provide regularly scheduled visits with Luella, failure to provide parenting skills classes offered with a before and after evaluation done (so progress could actually be measured) and the failure to provide thorough training of all the caseworkers in the basic parenting skills required by the court which prevented progress from being made for the return home of Luella Joneson. In Re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence

In final appeal this appellant pleads with the

court to reverse the finding of unfitness and to dismiss the adoption petition as it is not supported by clear and convincing evidence. Also to order the return of visitation as soon as possible..Even if unfitness is determined and adoption unavoidable father asks for an open adoption with visitation rights. The appellant, pro se sincerely believes there is a defect in the Illinois constitutional law that will not allow the return of his child on a joint custody basis when there has been no evidence proven of severe mental, emotional or physical abuse of his children on the father's part but only a lack of parenting skills that the social system did not attempt to offer properly